

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

7 ENOMA IGBINOVIA, ) 3:11-cv-00079-ECR-WGC  
8 Plaintiff, ) **Order**  
9 vs. )  
10 JAMES G. COX, et al., )  
11 Defendants. )  
12 )

14 This is a pro se prisoner civil rights action filed pursuant to  
15 42 U.S.C. § 1983.

## I. Background

18 On December 29, 2011, the Magistrate Judge issued a Report and  
19 Recommendation (#46) recommending that Defendants' motion for summary  
20 judgment (#15) be granted with respect to Plaintiff's Fourteenth  
21 Amendment procedural due process claim and denied with respect to  
22 Plaintiff's First Amendment access to courts claim. The Magistrate  
23 Judge also recommended that Plaintiff's motion for summary judgment  
24 (#26) be denied. On February 10, 2012, after performing a *de novo*  
25 review of Plaintiff's claims, we agreed with the Magistrate Judge and  
26 issued an Order (#50) approving and adopting the Report and  
27 Recommendation (#46). We found that Plaintiff was afforded all  
28 necessary due process with regard to his classification as a High Risk

1 Potential (HRP) inmate, including notice, a full classification  
2 hearing, and numerous classification reviews since being placed in  
3 administrative segregation.

4 On February 23, 2012, Plaintiff filed a motion to alter or amend  
5 (#55) the Court's previous Order (#50) pursuant to Federal Rule of  
6 Civil Procedure 59(e) which the Court will also treat as a motion for  
7 relief from an order pursuant to Rule 60(b), as the Court has not yet  
8 entered a final judgment in this case. Defendants responded (#57) on  
9 February 28, 2012. Plaintiff did not reply.

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## 11 II. Legal Standard

12 Federal Rule of Civil Procedure 59(e) provides that "[a] motion  
13 to alter or amend a judgment must be filed not later than 28 days  
14 after the entry of judgment." "A district court has considerable  
15 discretion when considering a motion to amend a judgment under Rule  
16 59(e)." Turner v. Burlington N. Santa Fe R. Co., 338 F.3d 1058, 1063  
17 (9th Cir. 2003) (citations omitted). Further, the Ninth Circuit has  
18 held that a Rule 59(e) motion should not be granted absent "highly  
19 unusual circumstances, unless the district court is presented with  
20 newly discovered evidence, committed clear error, or if there is an  
21 intervening change in the controlling law." Herbst v. Cook, 260 F.3d  
22 1039, 1044 (9th Cir. 2001) (quoting McDowell v. Calderon, 197 F.3d  
23 1253, 1255 (9 th Cir. 1999) (en banc)). Thus there are four grounds  
24 upon which a Rule 59(e) motion may be granted: (1) the motion is  
25 necessary to correct manifest errors of law or fact upon which the  
26 judgment is based; (2) the moving party presents newly discovered o

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1 previously unavailable evidence; (3) the motion is necessary to  
 2 prevent manifest injustice; or (4) there is an intervening change in  
 3 controlling law. Turner, 338 F.3d at 1063 (quoting McDowell, 197 F.3d  
 4 at 1254 n.1).

5 Under Rule 60(b), the court may relieve a party from an order for  
 6 the following reasons:

- 7 (1) mistake, inadvertence, surprise, or excusable neglect;
- 8 (2) newly discovered evidence that, with reasonable  
 diligence, could not have been discovered in time to  
 move for a new trial under Rule 59(b);
- 9 (3) fraud (whether previously called intrinsic or  
 extrinsic), misrepresentation, or misconduct by an  
 opposing party;
- 10 (4) the judgment is void;
- 11 (5) the judgment has been satisfied, released or  
 discharged; it is based on an earlier judgment that has  
 been reversed or vacated or applying it prospectively  
 is no longer equitable; or
- 12 (6) any other reason that justifies relief.

14 Motions to reconsider are generally left to the discretion of the  
 15 trial court. Downing v. Nevada, No. 2:11-cv-02024, 2012 WL 1298330,  
 16 at \*1 (D.Nev. Apr. 13, 2012) (citing Combs v. Nick Garin Trucking, 825  
 17 F.2d 437, 441 (D.C. Cir. 1987)). A motion for reconsideration must  
 18 set forth factors or law of a strongly convincing nature to persuade  
 19 the court to reverse its prior decision. Frasure v. U.S., 256  
 20 F.Supp.2d 1180, 1183 (D.Nev. 2003) (citing All Haw. Tours Corp. v.  
 21 Polynesian Cultural Ctr., 116 F.R.D. 645, 648-49 (D.Haw. 1987), *rev'd*  
 22 *on other grounds*, 855 F.2d 860 (1988)).

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24 **III. Discussion**

25 In his motion to amend or alter the judgment (#55), Plaintiff  
 26 asserts that Defendants failed to meet their burden of proving that he  
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1 should have been placed on HRP status. Plaintiff, however, has  
2 already brought this argument before the Court and the Court found it  
3 without merit. Defendants produced evidence showing that Plaintiff  
4 was afforded ample due process with regard to his HRP designation, as  
5 detailed exhaustively by the Magistrate Judge in the Report and  
6 Recommendation (#46). Plaintiff has not identified any mistake,  
7 intervening change in controlling law, newly discovered evidence,  
8 fraud, or any other reason justifying relief under either Rule 59(e)  
9 or 60(b). A motion for reconsideration is not a vehicle to reargue  
10 a previous motion, and a party seeking reconsideration must show more  
11 than a disagreement with the Court's prior decision. U.S. Westlands  
12 v. Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001) (citations  
13 omitted). Because Plaintiff has failed to set forth any valid reason  
14 for reversing the Court's prior decision, Plaintiff's motion must be  
15 denied.

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17 **IV. Conclusion**

18 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiff's motion to alter  
19 or amend (#55) is **DENIED**.

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22 DATED: May 14, 2012.

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Edward C. Reed.  
UNITED STATES DISTRICT JUDGE